

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

| | | |
|--|---|---------------------|
| In the Matter of |) | |
| |) | CG Docket No. 17-59 |
| Advanced Methods to Target and Eliminate |) | |
| Unlawful Robocalls |) | |
| |) | |

**REPLY COMMENTS OF FIRST ORION, CORP.
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

Jennifer Glasgow
EVP, Policy and Compliance
John Ayers
VP, Corporate Development
First Orion, Corp.
500 President Clinton Ave., Suite 215
Little Rock, AR 72201

Patricia Paoletta
Adrienne E. Fowler
Harris, Wiltshire & Grannis LLP
1919 M Street, N.W.
8th Floor
Washington, DC 20036
(202) 730-1300

February 22, 2018

TABLE OF CONTENTS

| | |
|--|---|
| INTRODUCTION | 1 |
| I. Commission precedent does not require automatic notification for blocked calls | 2 |
| II. The Commission should not impose new and unnecessary regulations on subscriber-initiated blocking and caller identification solutions..... | 4 |
| III. The Commission should not mandate a query-based system for call originators to check the status of their numbers..... | 7 |
| CONCLUSION..... | 9 |

INTRODUCTION

In its November Report and Order, the Federal Communications Commission (the “Commission” or “FCC”) adopted a new form of deregulation, which allowed providers to initiate call blocking without customer consent in rare instances where the call is almost certainly illegal, in order to better protect consumers.¹ In permitting certain forms of provider-initiated call blocking, the FCC made clear that it was not imposing new regulations on other advanced technological solutions designed to combat illegal calls.² But in response to narrow questions about how precisely to deregulate provider-initiated blocking (contained in a Further Notice of Proposed Rulemaking), various commenters have urged the Commission to effectively undo the consumer protective and deregulatory effects of the November Report and Order. Some commenters have urged the Commission to take steps that would undercut the ability of provider-initiated blocking to actually protect consumers. Others have urged the Commission to make it harder for providers to engage in call blocking that subscribers specifically ask for. And many commenters focus heavily on caller identification solutions, or “call labeling,” calling for the FCC to regulate or even ban this nascent, pro-consumer industry.

The Commission’s initial pro-consumer, deregulatory approach got it right. The Commission has never required a real-time notification of call blocking. Since automatically notifying a call originator whenever its call is blocked would benefit scammers, not consumers or legitimate call originators, the Commission should not require it now. Instead, the Commission should allow caller identification solutions and subscriber-initiated blocking

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 9706 ¶¶ 9-56 (2017). Unless otherwise indicated, all comments referenced herein were filed on Jan. 23, 2017 in CG Docket No. 17-59.

² *Id.* ¶ 8 n.26.

solutions (including solutions for call originators to learn the current status of their numbers) to develop without undue government interference.

I. Commission precedent does not require automatic notification for blocked calls

A provider should not have to provide a real-time alert, such as an indicator tone or designated SS7/SIP cause code, when it initiates a block in accordance with the Commission's rules. As our opening comments made clear, such a requirement would only provide illegal spoofers with real-time feedback on when to switch numbers, with little to no countervailing benefits for legitimate call originators.³ Notwithstanding, we agree service providers may opt, but should not be required, to transmit a busy signal or other indicator that is not limited to call blocking.⁴

Several commenters, however, distort Commission precedent to argue that the Communications Act *requires* a provider to transmit an indicator tone or designated cause code associated solely with call blocking whenever the provider blocks a call—and that sending a busy signal when blocking a call is per se unlawful.⁵ Their argument does not square with Commission precedent.

The Commission has never required providers to use a busy signal only when the intended call recipient's line is in use. The Commission has recognized that “user busy signaling

³ See Comments of First Orion at 3.

⁴ Requiring providers to do so would impose technological and cost burdens on providers, which would discourage providers from engaging in provider-initiated or subscriber-requested blocking.

⁵ See Comments of Professional Association for Consumer Engagement (“PACE”) at 5-8; Comments of Nobel Systems at 2-3; Comments of Retail Energy Supply Association at 8.

may in fact reflect network” based causes for call incompleteness,⁶ without categorizing such conduct as deceptive. Nor has the Commission ever required providers to transmit a signal or tone that is specific to call blocking, when engaging in legitimate and legal call blocking. The Commission has recognized, even before this proceeding began, that subscriber-initiated blocking and, in narrow circumstances, provider-initiated blocking are fully consistent with the Communications Act.⁷ The Commission made these determinations even though no dedicated signal code or tone existed to notify call originators of the blocking. And no dedicated signal code or tone exists today.

Instead, the Commission has purposefully taken a flexible approach to providers’ use of a busy signal, as well as their use and interpretation of SS7 and SIP cause codes for incomplete calls. The Commission has declined to “prescrib[e] a rigid menu of specific codes that must always be used” before a call can be considered “busy.”⁸ The Commission has recognized and blessed a system where “providers’ systems categorize call attempts differently.”⁹ Accordingly, the Commission has recognized that providers can—and in the rural call completion reporting context, should—consider a wide variety of types of calls with a wide variety of cause codes to qualify as “busy” calls.¹⁰

⁶ *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 16154 ¶ 43 (2013).

⁷ *Total Communications Services, Inc., and Atlas Tel. Co., Inc., v. AT&T*, Memorandum Opinion and Order, 16 FCC Rcd. 5726 ¶ 21 (2001) (finding that the Act did not prohibit carrier from blocking calls from its customers to a sham entity designed to impose increased access charges); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd. 7961 ¶¶ 154, 157 (2015) (finding that subscriber-initiated blocking for full categories of callers, rather than individual numbers, is consistent with the Communications Act).

⁸ *Rural Call Completion*, Declaratory Ruling, 30 FCC Rcd. 1243 ¶ 7 (2015).

⁹ *Id.*

¹⁰ *Id.* ¶¶ 6-7.

True, as the Commission recognized in 2012, providers may not deliver a deceptive intercept message that explicitly states a “call cannot be completed because the number is out of service or not reachable—when in fact the number is in service and is reachable,” in order to hide the fact that a carrier is engaging in blocking, locking, choking, reducing or restricting traffic in order to avoid access charges.¹¹ But such a rule is inapposite to using a busy signal when engaging in lawful provider-initiated or subscriber-initiated blocking. A busy signal is simply not the same thing as an intercept message that falsely or misleadingly states, “the call cannot be completed as dialed” when a provider unlawfully refuses to properly send a call through to a terminating carrier for completion, which was the problem the Commission was attempting to address when it articulated its rule against deceptive intercept notices.¹² Moreover, a provider that plays an intercept message to hide the fact that it is avoiding access charges is engaging in illegal activity—and the message is deceptive precisely because it covers up that illegal activity.¹³ In contrast, a provider who is legally blocking a call in accordance with Commission rules or a subscriber request hides nothing behind a busy signal.

II. The Commission should not impose new and unnecessary regulations on subscriber-initiated blocking and caller identification solutions

The Commission should resist call originators’ requests to expand the scope of the FNPRM and to impose new regulations on subscriber-initiated blocking and caller identification solutions. As our initial comments make clear, provider-initiated blocking is fundamentally different than subscriber-initiated blocking or caller identification solutions (also known as call

¹¹ *Developing a Unified Inter-carrier Comp. Regime Establishing Just & Reasonable Rates for Local Exch. Carriers*, Declaratory Ruling, 27 FCC Rcd. 1351, 1357 (2012).

¹² *See id.* at 1353.

¹³ *See id.* at 1357.

tagging or call labeling).¹⁴ With provider-initiated call blocking, a subscriber has no idea that calls are blocked. With subscriber-initiated blocking, a subscriber knows that some of his or her incoming calls will be blocked—and has consented to the service provider engaging in such blocking. With caller identification solutions, a subscriber receives all calls and has the opportunity to pick up a “Scam Likely” call (or not) as determined by the subscriber. While provider-initiated blocking is subject to extensive regulation, which the Commission loosened in its November 2012 Order, subscriber-initiated blocking and caller identification solutions are not currently subject to specific Commission rules. The Commission’s current approach is correct. It can provide education, guidance, and opportunities for industry collaboration. But it should not engage in unnecessary prescriptive regulation.

First Orion agrees with the staff of the Federal Trade Commission that the Federal Communications Commission should encourage providers and third-party app companies who offer subscriber-initiated blocking and caller identification solutions to engage in best practices.¹⁵ First Orion has a strong commitment to “communicating clearly to subscribers the types of calls that are being blocked, using plain and reasonably specific terms to label calls, and providing designated points of contact for subscribers and callers alike to address potentially erroneously blocked or labeled calls”—the best practices that the FTC staff recommend.¹⁶

But the Commission should not enshrine specific requirements into regulation, especially as industry is developing and constantly improving subscriber-initiated blocking and caller identification solutions. Cutting off the development of this technology through overregulation would cause real consumer harm. A number of commenters vastly oversimplify the complexities

¹⁴ See First Orion Comments at 5-6.

¹⁵ See Comments of FTC Staff at 5-6.

¹⁶ *Id.* at 5.

and sophistication of credible call blocking and labeling solutions and also fail to acknowledge the level of collaboration and cooperation among ecosystem members. Some generally vilify the solutions, contending the Commission must heavily regulate the practices because they “arbitrarily” prevent consumers from receiving and answering wanted calls with little countervailing consumer benefit.¹⁷ However, as stated good call identification solutions use sophisticated data analytics—and consumers clearly like these solutions and appreciate having alternative options easily available. Consumers regularly send out social media accolades for First Orion products and providers who employ First Orion solutions. Real consumers regularly say things such as, “@TMobile Please thank the team that came up with ‘Scam Likely’ on callerID. [Emoji of hands in prayer] It’s a godsend of a feature” and “Thank you @TMobile. Got my first ‘scam likely’ call this am. Great feature to help protect us. All carriers should adopt this.” First Orion tracks over 1,000 (and growing) positive tweets about Scam Likely per month. While relatively modest by general Twitter standards, positive tweets and social media postings about telecom companies (and, as the Commission well knows, telecom policy) are not common.¹⁸

Nor is regulation necessary to address call originators’ concerns. Industry is collaborating aggressively and effectively to address these issues. As USTelecom Association points out, “[a]broad range of industry stakeholders [analytics companies, carriers, call originators] are currently working collaboratively to develop frameworks and best practices for

¹⁷ See, e.g., Comments of Sirius XM Radio Inc. at 5-6.

¹⁸ First Orion also tracks negative social media posts about its products, including “#ScamUnlikely” posts, which describe purportedly mislabeled calls, in order to identify and address potential problems. As of this writing, there is an average of far less than one #ScamUnlikely post on Twitter per day.

addressing instances of false positives.”¹⁹ First Orion actively participates in these efforts and incorporated feedback from other industry participants, including call originators. It participated in a widely attended USTelecom workshop last November and plans to participate in a second session currently being planned. First Orion is a member of the Professional Association of Customer Engagement (PACE), an industry organization that has often criticized call blocking and caller identification technology and is active in PACE’s Communication Protection Coalition working group. That working group, which includes ACA International and the Consumer Relations Consortium (two organizations that have commented on this proceeding), has now had two productive working meetings, with a third planned for Q2 2018. While we refuse to put the interests of call originators above those of consumers, we actively engage with even our fiercest of critics and reach common ground wherever possible.

III. The Commission should not mandate a query-based system for call originators to check the status of their numbers

One request from call originators bears particular note. Some call originators have asked the Commission to require providers and analytics companies to provide an API or web portal that they could use to query how any number is being labeled at any time.²⁰ They would, in an ideal world, like to have a one stop shop where *all* the major analytics companies could be queried. While we understand the desire of call originators, such a solution would be unworkable and would undercut the consumer protective effect of call identification solutions. First Orion has developed alternative solutions, and the market will undoubtedly result in improvements and additional solutions in time. The Commission should allow this industry-led process to continue.

¹⁹ Comments of USTelecom Association at 2.

²⁰ See, e.g., Comments of Professional Association of Customer Engagement at 4.

First Orion has studied the various approaches to satisfying the basic need for legitimate call originators to know when their calls are being blocked or labeled as scams, taking into account several important dynamics. First, authenticating legitimate call originators is integral to any solution. It is in no one's interest to help scammers know that call management solutions have "caught" them. Thus, there must be a registration and authentication process before a call originator is provided information about how its calls are being labeled. No commenter proposes a reliable, long-term authentication solution that the Commission could enshrine in regulation—likely because industry needs time to develop better authentication solutions and because authentication solutions need to be able to change over time as scammers evolve.

Second, at least in First Orion's case, labels are not static. Scammers are getting more and more sophisticated over time and illegally spoofing legitimate numbers for shorter and shorter periods of time to avoid getting caught by call management solutions. First Orion has developed proprietary and complicated analytics to address this issue. First Orion's solutions are flexible enough that the status of a number can change in a matter of minutes, as scammers use and then abandon a given number. For example, the status of a number may be fine at 8:00am, identified as a scam at 10:00am while illegal spoofing is going on, and back to being fine by 1:00pm. This means that to properly understand the status of a number (and its calls), a call originator must constantly monitor the status of a particular number.

Taking these considerations into account, we have developed a number of solutions for call originators, and call originators have developed their own work-arounds. As we discussed in our opening comments, First Orion offers www.calltransparency.com, a free registry for call originators to register their numbers as a legitimate calling party. After an authentication process, the call originators are given a report showing which numbers are currently being

labeled as scams. Once registered, legitimate calls from a registered number will not be labeled as scams by First Orion; calls from a registered number will only be labeled as scams in the event we see strong and up-to-date indicia that a scammer has hijacked (spoofed) the number. This eliminates the need for call originators to constantly check their numbers to watch for a scam label via an API or a query.

To help conscientious call originators better understand how consumers perceive their calling practices and as part of our commitment to help call originators actually reach consumers who want and need their calls, First Orion also offers a service that will monitor any designated telephone numbers the originator chooses and provide regular reporting on how the number is scored. A call originator can also sign up for alerts that provide real-time information about changes in the status of a number being monitored. The reports and alerts help a call originator know when its number is being illegally spoofed. They also help call originators understand when they are engaged in practices that consumers dislike, thereby maximizing answer rates and optimizing call tactics. Early feedback from participating call originators is that the information and insights the service provides far outweigh the modest fee charged.

First Orion believes that these two services provide better solutions for call originators than the API or query suggested in their comments. We are more than willing to continue to engage with various industry players to refine these solutions, or to work with call originators and their industry groups as they develop alternative solutions. However, the Commission should not mandate the creation of query-based systems at this time.

CONCLUSION

The Commission should stick to the deregulatory and pro-consumer approach it embraced when it allowed certain types of provider-initiated blocking. It should decline to

require a specific indicator tone for blocked calls, decline to impose new and unnecessary regulations on subscriber-initiated blocking and call identification solutions, and decline to mandate the creation of a query-based system for monitoring number status.

February 22, 2018

Respectfully submitted,

/s/ Jennifer Glasgow

Jennifer Glasgow
EVP, Policy and Compliance
John Ayers
VP, Corporate Development
First Orion, Corp.
500 President Clinton Ave., Suite 215
Little Rock, AR 72201

Patricia Paoletta
Adrienne E. Fowler
Harris, Wiltshire & Grannis LLP
1919 M Street, N.W.
8th Floor
Washington, DC 20036
(202) 730-1300